

**BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO**

SANIJE BERISHA,

Claimant,

v.

THE GROVE HOTEL,

Employer,

and

INSURANCE COMPANY  
OF THE WEST,

Surety,

Defendants.

**IC 2002-003038**

**FINDINGS OF FACT,  
CONCLUSIONS OF LAW,  
AND RECOMMENDATION**

May 30, 2012

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**INTRODUCTION**

Pursuant to Idaho Code § 72-506, the Idaho Industrial Commission assigned the above-entitled matter to Referee LaDawn Marsters, who conducted a hearing in Boise, Idaho, on April 11, 2012. Claimant represented herself at hearing. Thomas V. Munson represented Defendants. Claimant submitted oral and documentary evidence. Kujtin I. SopotI served as an interpreter for the benefit of Claimant. Defendants filed a post-hearing brief, but Claimant did not. The matter came under advisement on April 28, 2012.

## **PROCEDURAL BACKGROUND AND PREVIOUS FINDINGS**

Three previous hearings were held in this case, on October 17, 2003, December 17, 2009 and January 10, 2011.

Robert D. Barclay was the presiding Referee at the 2003 hearing and Claimant was represented by attorney Vernon K. Smith with whom she is no longer affiliated. A decision was issued on April 5, 2004 in which the Commission ordered that:

1. Claimant incurred CRPS I<sup>1</sup> as a consequence of her February 2002 industrial accident.
2. Claimant is not eligible for any further medical care without further documentation.
3. Claimant is not entitled to any additional temporary partial and/or temporary total disability (TPD/TTD) benefits.
4. Claimant is entitled to a permanent partial impairment (PPI) rating of 5% of the whole person. Surety is entitled to credit for any amount previously paid.
5. Claimant is entitled to a permanent partial disability (PPD) rating of 5% of the whole person inclusive of her PPI.
6. Apportionment under Idaho Code § 72-406 for a pre-existing condition is not warranted.
7. The issue of retraining under Idaho Code § 72-450 has been waived.
8. Claimant is not entitled to attorney's fees as provided for by Idaho Code § 72-804.
9. Pursuant to Idaho Code § 72-718, this decision is final and conclusive as to the matters adjudicated.

On April 6, 2009, Claimant filed a new Complaint seeking additional medical care. Claimant was represented by Andrew C. Marsh with Seiniger Law Offices from May 21, 2009,

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<sup>1</sup> The 2003 Decision references CRPS as "reflex sympathetic dystrophy" or "RSD" or "CRPS I." CRPS I is an updated identifier for RSD. CRPS I is truncated here as CRPS for simplicity.

until October 13, 2009. She appeared *pro se* at the second hearing, at which Susan Veltman was the presiding Referee. A decision was issued on January 21, 2010. The Commission ordered that Claimant had not met her burden of proof to establish entitlement to additional medical benefits.

On August 21, 2010, Claimant, still acting *pro se*, filed a third complaint seeking additional medical care. Discovery entanglements ensued, leading to an Order Finding Claimant in Contempt, Denying Claimant's Request to Schedule Hearing and Requiring Discovery and Offer of Proof From Claimant, entered November 22, 2010. A Motion to Dismiss was filed by Defendants on December 9, 2010, alleging that Claimant's November 29, 2010 response to the Order was insufficient. That motion prompted the third hearing, on January 10, 2011, before Referee LaDawn Marsters. At that hearing, Claimant again generally attributed all of her physical and mental difficulties, including itching and scratching leading to skin lesions and a fungal rash, headaches, loss of vision in the right eye and various psychological symptoms to her 2002 right upper extremity (RUE) crush injury. However, the Commission found insufficient evidence in the record to establish that any of her claims were related to her 2002 industrial injury; therefore, it dismissed Claimant's Complaint without prejudice with respect to her RUE CRPS claims, and with prejudice as to her claims related to all other alleged conditions because they are barred by *res judicata*.

These previous decisions were not appealed and have become final.

### **ISSUE**

Pursuant to the Notice of Hearing issued March 6, 2012, the sole issue to be decided is whether and to what extent Claimant is entitled to additional medical care.

## **CONTENTIONS OF THE PARTIES**

Claimant seeks an order from the Commission authorizing additional medical treatment. She believes, as she always has, that the industrial accident is the source of all of her physical and psychological problems. According to her Complaint, Claimant seeks treatment for “chronick [sic] severe disabling pain in the right upper extremity, as well as subsequently developing post-traumatic stress disorder as a result of the injury.” She also seeks treatment unrelated to her RUE CRPS: “Whether or not she has or had complex regional pain syndrome does not change the facts of her ongoing symptoms and problems relating to the injury and not belived [sic] that she ever reached maximum medical improvement as the claim was closed prematurely before all treatment options have been exhausted.” (*See* Complaint). Claimant’s testimony at the hearing confirms that she believes Surety should pay for treatment for all of her various maladies.

Defendants contend that Claimant has not met her burden of proof to establish entitlement to additional medical benefits and request that consideration be given to the previous findings on this issue.

## **EVIDENCE CONSIDERED**

The record in this matter consists of the following:

1. Claimant’s Exhibit A;
2. Testimony taken at the hearing from Claimant and her husband, Xhevat Berisha;  
and
3. The Industrial Commission’s legal file which includes the decisions, transcripts and exhibits relating to the previous hearings of October 17, 2003, December 17, 2009, and January 10, 2011.

After having considered all the above evidence and the Defendant's brief, the Referee submits the following findings of fact and conclusions of law for review by the Commission.

### **FINDINGS OF FACT**

1. Claimant was 46 years of age at the time of the hearing. She wore opaque dark glasses, walked with a white cane for the sight-impaired, and her right hand and forearm were wrapped in an Ace bandage.

2. Claimant testified that she filed her instant Complaint for the same reasons as before – headaches, itching and scratching, right leg pain, arm pain, blindness and psychological problems including suicidal ideations. During his testimony, her husband generally confirmed that he witnesses her symptoms on a daily basis.

### **Medical Evidence Admitted**

3. The only new medical evidence submitted consists of two of the documents contained in Claimant's Exhibit A, including:

a. April 2, 2012 open letter from Charles Sherwood, PA, in which he summarizes some of Claimant's complaints over the years, including those related to *left* arm pain:

She has had persistent constant pain in the left arm stemming from the date of that accident. It was felt at the time that she may have developed complex regional pain [sic] syndrome subsequent to that injury. That diagnosis has been questioned by some providers over the ensuing years. Whatever the diagnosis may be, the pain in the arm has been unrelenting and has severely limited her functionality.

Claimant's Exhibit A-1; and

b. April 2, 2012 letter to Claimant from Alex J. Reed, Psy.D., psychologist, stating her diagnoses of psychotic disorder (NOS), post

traumatic stress disorder and major depression (recurrent, severe, with psychotic features).

4. The remainder of Claimant's Exhibit A included medical evidence that was, or could have been, introduced at a former hearing:

a. December 5, 2010 letter from Charles Sherwood, PA, asserting that Claimant's RUE CRPS symptoms had worsened, which was not entered into evidence at a previous hearing;

b. July 5, 2010 open letter by Chad Sherwood, PA-C, admitted into evidence at the January 10, 2011 hearing;

c. May 14, 2010 letter to James Tweeten, M.D., ophthalmologist, from his practice partner, Leo Harf, M.D., also an ophthalmologist, admitted into evidence at the January 10, 2011 hearing;

d. March 8, 2010 brain MRI report, admitted into evidence at the January 10, 2011 hearing;

e. January 28, 2010 cervical spine MRI report, admitted into evidence at the January 10, 2011 hearing; and

f. April 7, 2009 letter from Richard Radnovich, D.O., to Claimant's former attorney, which was entered into evidence at the December 17, 2009 hearing.

5. Claimant testified, as she did at the 2011 hearing, that her pain has not changed: "I am here, judge, I am repeating the same request that I have had before." Tr., 15. Specifically with respect to her arm pain, Claimant explained in response to the Referee's questions:

Q. You talked about arm pain. What kind of arm pain do you have?

A. I start right here and I have injury until here to my elbow. I have my arm in the machine when it was caught and like a knife sharp pain and starts going up and end up in my head, the pain. And, then, when it goes to my shoulder - - goes all the way on my back. The pain. And it's just like a knife – a sharp knife pain.

Q. Okay. And you're pointing to your right arm; is that correct?

A. Yes.

Q. Do you have pain in your left arm?

A. No. No pain in my left side. No.

Q. Have you ever?

A. Only when I'm - - like ever have a fever or – oh, sometimes, yes. Oh. I do have some itching sometimes on my left side. My left arm. You can see if I lift my - - my arm here.

Tr., pp. 16-17.

### **Evidence of RUE Pain from Prior Hearings**

6. At Claimant's first hearing, the Referee considered evidence of her RUE symptoms, including:

a. "...severe pain beginning at her right wrist and radiating to her hand and up her arm to her shoulder and to the right side of her head." 2003 Decision, p. 12. (Other reports of RUE pain, see *Id.* at p. 9, for example.)

b. "...marked pain response with passive flexion of her fingers...she would only allow minimal light touching." 2003 Decision, p. 6. "...would not allow [the physician] to touch her RUE. She also refused to move her wrist." *Id.* at p. 7. "...unwilling to allow the [hand] therapist to touch her hand, thereby rendering therapy unproductive." *Id.* at p. 8. "...Claimant would not allow him to touch her hand, but...she readily touched it with her other hand." *Id.* "[The physician] noted he could not perform a decent examination of Claimant's RUE due to her significant hypersensitivity." *Id.* at p. 10.

c. Claimant's hand therapist's report to Claimant's physician that she staged a "contrived fainting incident" and, after witnessing a similar incident for himself, he opined it was "bizarre." 2003 Decision, p. 8.

d. A March 11, 2002 bone scan indicating no evidence of CRPS.

- e. A March 13, 2002 right cervical stellate ganglion block suggesting she does not have CRPS because it did not improve her RUE symptoms.
- f. A normal September 1, 2002 venous examination, showing no evidence of deep vein thrombosis.
- g. September 2, 2002 chest x-rays evidencing no congestive heart failure or pneumonia.
- h. Discontinuance of physical therapy by her care provider after 11 sessions when Claimant began to regress after an initial period of improvement.
- i. Normal right wrist x-rays and CT scan December 2002.
- j. An alternate opinion that the December 2002 right wrist x-rays showed slight demineralization of the right wrist and hand.
- k. An IME physician opinion that Claimant was malingering.
- l. A second treating physician opinion that Claimant had CRPS.
- m. An IME panel finding that Claimant had somatization disorder with symptom magnification and mild CRPS in her RUE, and that she was medically stable.
- n. Claimant's reports of the same symptoms at a follow-up IME on September 30, 2003 and that physician's confirmation that she was medically stable.

7. Referee Barclay determined that Claimant was not then presently entitled to additional medical care:

The record reflects the [Independent Medical Examination] Panel found Claimant medically stable and opined she would not improve with any further treatment. Six months later Dr. Weiss re-examined her and found that her condition had not changed. Claimant argues she is entitled to the care recommended by Dr. DuBose. There is no chain of referral from the physicians who were treating Claimant to Dr. DuBose. The sympathetic nerve bloc he recommended had already been tried by Dr. Moore and Dr. Gussner. It had no effect on Claimant. Dr. Moore had also requested the nerve conduction studies recommended by Dr. DuBose, but Claimant refused to allow anyone to touch her to complete the test. This refusal also led to a curtailment of her physical therapy. The Referee finds Defendants have provided Claimant with the reasonable medical care



required by the statute. Thus, the Referee concludes Claimant is not eligible for any further medical care without further documentation. The evidence submitted does not support the need for any further medical care.

8. At Claimant's second hearing, Referee Veltman considered evidence of Claimant's RUE symptoms, including:

- a. CRPS pain and a physician's unspecified recommendations for ongoing medical management.
- b. A May 31, 2009 physician's note limiting Claimant's lifting to 10 pounds.
- c. A chart note stating Claimant screamed loudly when the IME physician touched her right fingers but soon after did not react at all when he touched the same area while he was moving her wrist.
- d. The IME physician observation of 30 to 40 well-healed scars from previous lesions and four or five ulcerated areas on her right arm due to scratching as a result of an itching/burning sensation, as well as his diagnosis of self-mutilization secondary to severe psychiatric issues.

9. Referee Veltman determined Claimant was not entitled to additional medical benefits:

Claimant failed to meet her burden to establish entitlement to additional medical care for her 2002 industrial injury. The opinion of Dr. Radnovich suggests that ongoing treatment for CRPS is generally appropriate and that Claimant would benefit from ongoing medical management. Dr. Radnovich's report is non-specific about what symptoms related to CRPS 1 would benefit from treatment and/or what type of treatment plan would be appropriate. Dr. Radnovich did not have the benefit of reviewing a complete set of Claimant's medical records, nor did he have the opportunity to review the previous decision in this case which summarized the treatment rendered to Claimant as well as the obstacles to providing such treatment. Dr. Radnovich's report does not address the nature of symptoms for which Claimant has sought treatment since the 2003 hearing and/or relate Claimant's symptoms to her compensable diagnosis of RUE CRPS 1...Claimant has not met her burden of proof to establish entitlement to additional medical benefits.

10. At the third hearing, Referee Marsters considered evidence of Claimant's RUE symptoms:

- a. RUE pain complaints documented by her treating physician assistant and her psychologist.
- b. February 4, 2010 cervical epidural steroid injection at C6-7 that did not produce significant relief from persistent burning pain.
- c. Opinion from her treating physician assistant that her RUE symptoms were more consistent with bilateral upper extremity radiculopathy than CRPS and recommending a surgical consultation.
- d. Claimant reported significant burning pain, sometimes starting in her neck and sometimes starting in her arm, to a neurosurgeon who evaluated her in February 2010. Claimant's examination was difficult due to significant pain to touch. She had some atrophic changes of her RUE, including shiny skin.
- e. Normal EMG nerve conduction tests of both UEs.
- f. Diagnosis of CRPS by neurosurgeon.
- g. Recommendation of stellate ganglion block for diagnostic purposes by neurosurgeon who was apparently unaware she had previously undergone this procedure without relief, and which was not ultimately performed after evaluation by a pain specialist.

11. Referee Marsters concluded that Claimant was not entitled to additional medical treatment because no physician had diagnosed a change in Claimant's CRPS condition or recommended a new treatment for Claimant's CRPS pain:

Claimant has presented no evidence, to a reasonable degree of medical probability, that either her CRPS condition or her treatment options have changed. Her claim has essentially already been adjudicated. Yet, Claimant seeks to relitigate her continuing but stable CRPS symptoms in hopes of obtaining a different answer this time.

12. Claimant was found not credible at the prior three hearings; this Referee again finds Claimant is not a credible witness.

### **DISCUSSION AND FURTHER FINDINGS**

The provisions of the Workers' Compensation Law are to be liberally construed in favor of the employee. *Haldiman v. American Fine Foods*, 117 Idaho 955, 956, 793 P.2d 187, 188 (1990). The humane purposes which it serves leave no room for narrow, technical construction. *Ogden v. Thompson*, 128 Idaho 87, 88, 910 P.2d 759, 760 (1996). However, the Commission is not required to construe facts liberally in favor of the worker when evidence is conflicting. *Aldrich v. Lamb-Weston, Inc.*, 122 Idaho 361, 363, 834 P.2d 878, 880 (1992).

The burden of proof in a workers' compensation case is on the claimant. Whether asserting an injury as the result of an accident or an occupational disease, a claimant must prove, to a reasonable degree of medical probability, a causal connection between the condition for which compensation is claimed and the industrial accident or occupational exposure which caused the alleged condition. See, *Hart v. Kaman Bearing & Supply*, 130 Idaho 296, 299, 939 P.2d 1375, 1378 (1997) (proving causation in an injury/accident claim), and *Langley v. State Industrial Special Indemnity Fund*, 126 Idaho 781, 786, 890 P.2d 732, 737 (1995) (proving causation in an occupational disease claim). In either case, medical evidence is necessary to prove a probable causal connection. "In this regard, 'probable' is defined as 'having more evidence for than against.'" *Soto v. Simplot*, 126 Idaho 536, 540, 887 P.2d 1043, 1047 (1994).

Medical evidence required to prove causation must plainly and unequivocally convey the opinion that events are causally related. See, *Jensen v. City of Pocatello*, 135 Idaho 406, 412, 18 P.3d 211, 217 (2000), citing *Paulson v. Idaho Forest Indus., Inc.*, 99 Idaho 896, 901, 591 P.2d

143, 148 (1979). As discussed extensively in *Jensen*, the causation opinion need not be an affirmative finding.

**Except for RUE CRPS, The Issues Raised in Claimant's Complaint Have Been Adjudicated By The Commission**

The legal doctrines of *res judicata* and collateral estoppel apply to agency proceedings, including those of the Industrial Commission. *Welch v. Del Monte Corp.*, 128 Idaho 513, 516, 915 P.2d 1371, 1374 (1996). *Res judicata* is comprised of claim preclusion (true *res judicata*) and issue preclusion (collateral estoppel). *Hindmarsh v. Mock*, 138 Idaho 92, 94, 57 P.3d 803, 805 (2002). Under the principles of claim preclusion, a valid final judgment rendered on the merits by a court of competent jurisdiction is an absolute bar to a subsequent action between the same parties upon the same claim. *Id.* The doctrine of claim preclusion bars not only a subsequent relitigation of a claim previously asserted, but also serves as an absolute bar to claims relating to the same cause of action which might have been made. *Id.* Stated differently, *res judicata* bars relitigation of matters already raised, and those that could or should have been raised from the outset. *U.S. Bank National Ass'n v. Kuenzli*, 134 Idaho 222, 999 P.2d 877 (2000). The doctrine of *res judicata* extinguishes all claims arising out of the same transaction, or series of transactions from which the cause of action arose. *Id.* at 881.

In worker's compensation cases, the doctrine is altered. *Res judicata* only bars relitigation of worker's compensation claims that were actually adjudicated:

However, Idaho Code § 72-718 varies the doctrine of *res judicata* as applied to worker's compensation cases. *See Sund v. Gambrel*, 127 Idaho 3, 7, 896 P.2d 329, 333 (1995). Decisions by the Commission are conclusive only as to matters *actually adjudicated*, not as to all matters which could have been adjudicated. *Id.*; *see also Woodvine v. Triangle Dairy, Inc.*, 106 Idaho 716, 720-21, 682 P.2d 1263, 1267-68 (1984).

*Wernecke v. St. Maries Joint School Dist. No. 401*, 147 Idaho 277, 207 P.3d 1008 (2009).

Regarding the separate, but related, concept of collateral estoppel, issue preclusion bars the relitigation of issues actually adjudicated in prior litigation between the very same parties. *Rodriguez v. Department of Correction*, 136 Idaho 90, 29 P.3d 401 (2001).

13. Collateral estoppel is inapplicable in cases like this one where the litigation, albeit including several different hearings, is nevertheless all part of the same case. The record does indicate, however, that some of Claimant's claims may be barred by the application of *res judicata* because the Commission has already rendered a valid final judgment.

14. As noted above, the findings in the previous decisions have become final. At all three prior hearings, after presenting testimony and medical records about a number of physical and psychological complaints, it was found that Claimant failed to meet her burden of proof to establish entitlement to further medical care. The only condition previously found causally related to her 2002 industrial injury is her diagnosis of CRPS.

15. At the instant hearing, Claimant's burden was to prove that a change has occurred in her treatment options such that further reasonable medical care is required, *or* that she has developed a new injury as a result of her 2002 industrial accident that has not already been adjudicated. These matters are addressed *supra*.

**Claimant has failed to prove that she is entitled to additional reasonable medical care for CRPS because her treatment options have not changed**

16. Claimant's CRPS was found to be compensable at the first hearing, but no further treatment was found reasonable or necessary, in part because Claimant would not allow anyone to touch her right hand for testing or therapy. In addition, there was significant evidence that Claimant was exaggerating her symptoms. Similar evidence was considered at the second hearing where, again, no further treatment was found reasonable. At the third hearing, Claimant

did not establish that her CRPS symptoms or treatment options had changed such as to warrant a judgment allowing additional medical treatment benefits.

17. At the fourth hearing, Claimant described knife-like pain throughout her RUE. Interestingly, however, her right arm and forearm were heavily bandaged. This is noteworthy because Claimant has repeatedly displayed strong pain reactions to a simple touch on her right arm, and this symptom has been associated with her CRPS diagnosis, the only medical basis for her workers' compensation claim. It would appear that the nature of her pain may have changed. Alternatively, Claimant wore the bandage to her hearing in an attempt to gain the Referee's sympathy. Either way, her appearance at the hearing was inconsistent with the symptomatology underlying her CRPS diagnosis.

18. The only relevant medical evidence relating to Claimant's RUE CRPS consists of PA Sherwood's April 2, 2012 letter in which he states Claimant has had "persistent constant pain in the left arm stemming from the date of that accident." CE A-1. Although the letter refers to the left arm, this is most likely an inadvertent error. It goes on to state, "It was felt at the time that she may have developed complex regional pani [*sic*] syndrome subsequent to that injury. That diagnosis has been questioned by some providers over the ensuing years. Whatever the diagnosis may be, the pain in the arm has been unrelenting and has severely limited her functionality." *Id.* PA Sherwood is very familiar with Claimant's case. The record contains evidence establishing his knowledge of her right arm CRPS, with no evidence that he has ever suspected or alluded to a left arm CRPS condition.

19. Nevertheless, PA Sherwood's letter fails to establish that Claimant's CRPS condition has worsened or to recommend any treatment options. The only opinion PA Sherwood offers is that Claimant's functionality is limited by pain. As such, no further scrutiny

of PA Sherwood's opinion is necessary because its substance fails to support Claimant's case regardless of his qualifications.

20. Claimant testified that one of her care providers recommended surgery. However, Claimant is not qualified to render a medical opinion.

21. As a result of the foregoing, the Referee finds inadequate medical evidence to establish that any physician diagnosed a change in Claimant's CRPS condition or recommended a new treatment for Claimant's CRPS pain. Claimant has presented no evidence, to a reasonable degree of medical probability, that either her CRPS condition or her treatment options have changed.

22. Claimant's entitlement to medical care for her diagnosed condition of CRPS is not barred because this is a compensable condition. However, she has failed to adduce new evidence of any change in her treatment options entitling her to additional reasonable medical care. Therefore, her claim for such care should be dismissed without prejudice.

**Litigation of additional conditions asserted by Claimant in the fourth hearing is barred by res judicata**

23. Claimant's Complaint, testimony and exhibits indicate she now seeks relief related to symptoms and conditions in addition to her CRPS symptoms, including headaches, itching and scratching, right leg pain, arm pain, blindness and psychological problems including suicidal ideations.

These difficulties were previously found by the Commission to be not compensable, as addressed supra.

24. **Itching and Scratching.** After considering evidence of Claimant's itching and scratching condition, with resultant lesions and rash, Referee Veltman determined it was not compensable. Nevertheless, Claimant continued to seek medical care benefits for this condition

at the third hearing, where it was barred. Her claim related to her itching and scratching condition remains barred.

25. **Headaches.** Claimant has consistently reported headaches at all three hearings; however, after considering the medical evidence, neither prior Referee found headaches to be a compensable injury. At the third hearing, Claimant presented 2010 evidence that her physician sent her for a brain MRI to investigate her headaches. That MRI revealed several possible causes, none of which any medical expert opined was related to her industrial accident. Regardless of that finding, which would also lead to a conclusion that Claimant is not entitled to compensation for treatment of her headaches, Claimant's claim related to headaches was barred following the third hearing. Her claim related to her headaches remains barred.

26. **Right Eye Vision Loss.** At the second hearing, Claimant reported and presented evidence of loss of sight in her right eye. The Referee found this condition was not compensable. At the third hearing, Claimant again reported right eye blindness, this time providing medical records from a different ophthalmologist indicating a remotely possible link to her industrial accident. Because her claim related to her right-eye blindness was already adjudicated at the second hearing, it was barred following her third hearing. Claimant's claim related to right eye vision loss remains barred.

27. **Psychological Symptoms.** At the first and second hearings, but especially at the second, Claimant expressed her poor state of mental health and her frustration with her condition, her treatment options and the legal system. At the second hearing, evidence of her mental and cognitive difficulties was considered and these were found to be not compensable. At the third hearing, Claimant presented a new record from Dr. Reed indicating she has now been formally diagnosed with depression and PTSD.



28. Claimant's mental health has previously been considered by the Commission and found to be not compensable. Her claims related to her mental health conditions, including depression and PTSD were barred following the third hearing. Claimant's claims related to her psychological symptoms remain barred.

29. **Right Leg Pain.** At the second hearing, Claimant reported right leg numbness, but was unable to establish that this condition was caused by the 2002 industrial accident. At the fourth hearing, she testified to right leg pain, but provided no medical evidence of a causal connection with her right arm crush injury. In addition, she also testified that the nature of her symptoms hadn't changed, but only the severity.

30. Claimant's right leg symptoms have previously been considered by the Commission and found to be not compensable. There is inadequate evidence to establish that her right leg complaints have changed over time, or that they are related to her 2002 industrial accident. Claimant's claims related to her right leg pain and numbness are barred.

31. The Referee finds good cause to dismiss Claimant's Complaint with prejudice as to those claims found to be barred by *res judicata*.

### **No new claims established**

32. Claimant generally attributes all of her physical and mental difficulties to her 2002 RUE crush injury. However, the Referee finds insufficient evidence in the record to establish that Claimant now asserts any claims with respect to any specific new medical conditions allegedly related to her 2002 industrial injury.

33. All other issues are moot.

### **CONCLUSIONS OF LAW**

1. Claimant has raised no new issues for adjudication by the Commission. Therefore:

- a. Claimant's Complaint should be dismissed *without prejudice* as to her RUE CRPS claims; and
  - b. Claimant's Complaint should be dismissed *with prejudice* as to those claims found to be barred by *res judicata*.
2. Claimant remains eligible for reasonable and necessary medical treatment for her RUE CRPS.
3. All other issues are moot.

### **RECOMMENDATION**

The Referee recommends that the Commission adopt the foregoing findings of fact and conclusions of law and issue an appropriate final order.

DATED this 15<sup>th</sup> day of May 2012.

INDUSTRIAL COMMISSION

/s/ \_\_\_\_\_  
LaDawn Marsters, Referee

ATTEST:

/s/ \_\_\_\_\_  
Assistant Commission Secretary

### **CERTIFICATE OF SERVICE**

I hereby certify that on the 30<sup>th</sup> day of May a true and correct copy of **FINDINGS OF FACT, CONCLUSION OF LAW, AND RECOMMENDATION** was served by regular United States Mail upon:

SANIJE BERISHA  
408 EAST 46TH STREET, #9  
GARDEN CITY, ID 83714

THOMAS V MUNSON  
ANDERSON, JULIAN & HULL LLP  
PO BOX 7426  
BOISE ID 83707-7426

sjw

/s/ \_\_\_\_\_

**BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO**

SANIJE BERISHA,

Claimant,

v.

THE GROVE HOTEL,

Employer,

and

INSURANCE COMPANY  
OF THE WEST,

Surety,

Defendants.

**IC 2002-003038**

**ORDER**

May 30, 2012

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Pursuant to Idaho Code § 72-717, Referee LaDawn Marsters submitted the record in the above-entitled matter, together with her recommended findings of fact and conclusions of law, to the members of the Idaho Industrial Commission for their review. Each of the undersigned Commissioners has reviewed the record and the recommendations of the Referee. The Commission concurs with these recommendations. Therefore, the Commission approves, confirms, and adopts the Referee's proposed findings of fact and conclusions of law as its own.

Due to past disruptive behavior and the Director's letter of December 8, 2011, Claimant and her husband are prohibited from entering any Idaho Industrial Commission office without first obtaining written permission from the Director, Mindy Montgomery.

Based upon the foregoing reasons, IT IS HEREBY ORDERED that:

1. Claimant has raised no new issues for adjudication by the Commission. Therefore:

- a. Claimant's Complaint should be dismissed *without prejudice* as to her RUE CRPS claims; and
  - b. Claimant's Complaint should be dismissed *with prejudice* as to those claims found to be barred by *res judicata*.
2. Claimant remains eligible for reasonable and necessary medical treatment for her RUE CRPS.
3. All other issues are moot.
4. Pursuant to Idaho Code § 72-718, this decision is final and conclusive as to all matters adjudicated.

DATED this 30<sup>th</sup> day of May,  
2012.

INDUSTRIAL COMMISSION

/s/  
Thomas E. Limbaugh, Chairman

/s/  
Thomas P. Baskin, Commissioner

Unavailable for Signature  
R.D. Maynard, Commissioner

ATTEST:

/s/  
Assistant Commission Secretary

### **CERTIFICATE OF SERVICE**

I hereby certify that on the 30<sup>th</sup> day of May, 2012, a true and correct copy of the foregoing **ORDER** was served by regular United States Mail upon each of the following:

SANIJE BERISHA  
408 EAST 46TH STREET, #9  
GARDEN CITY, ID 83714

THOMAS V MUNSON  
ANDERSON, JULIAN & HULL LLP  
PO BOX 7426  
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sjw

/s/\_\_\_\_\_